

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

The landscape of Medicaid fraud, waste and abuse has changed and continues to evolve. A number of statutes and rules have changed rapidly in recent years at both the federal and state levels. The Department needs to clarify and make more explicit current policy. These changes are in keeping with the 2010 United States Patient Protection and Affordable Care Act.

Any interested person may make written comments on the proposed amendments on or before September 23, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule **79.2(1)**, definitions of “Suspension of payments” and “Withholding of payments,” as follows:

“*Suspension of payments*” means the temporary cessation of payments due a person until the resolution of ~~the~~ a matter in dispute between ~~the~~ a person and the department.

“*Withholding of payments*” means a reduction or adjustment of the amounts paid to a person on pending and subsequently submitted bills for purposes of offsetting ~~overpayments previously~~ payments made to, received by, or in the possession of a person.

ITEM 2. Amend subrule 79.2(2) as follows:

**79.2(2) Grounds for sanctions.** The department may impose sanctions against any person when appropriate. Appropriate grounds for the department to impose sanctions include, but are not limited to, the following:

*a.* to *k.* No change.

*l.* Breaching any settlement or similar agreement with the department, or failing to abide by the terms of any agreement with any other entity relating to, or arising out of, the state medical assistance program.

*m.* to *v.* No change.

*w.* Billing for services provided by an excluded, nonenrolled, ~~sanctioned~~ terminated, suspended, or otherwise ineligible provider or person.

*x.* and *y.* No change.

ITEM 3. Amend subrule 79.2(3) as follows:

**79.2(3) Sanctions.**

*a.* No change.

b. The withholding of ~~payments~~ a payment or a recoupment of medical assistance funds is not, in itself, a sanction. Overpayments, civil monetary penalties, and interest ~~charged~~ may also be withheld from future payments to the provider without imposing imposition of a sanction.

c. Mandatory suspensions and terminations.

(1) No change.

(2) ~~Termination is mandatory when a person pleads guilty or nolo contendere to, or is convicted of, any crime punishable by a term of imprisonment greater than five years, any crime of violence, any controlled substance offense, or any crime involving an allegation of dishonesty. Termination is also mandatory upon entry of final judgment, in the Iowa district court or a federal district court of the United States, of liability of the person in a false claims action.~~

(3) No change.

(4) Upon notification from the United States Department of Justice, the Iowa department of justice, the department of inspections and appeals, or a similar agency, that a person has failed to respond to a civil investigative demand or other subpoena in a timely manner as set forth in governing law and the demand or other subpoena itself, the department shall immediately suspend the person from participation and suspend all payments to the person. The suspension and payment suspension shall end upon notification that the person has responded to the demand in full.

~~d. Notwithstanding any previous successful enrollment in the medical assistance program, the person's passing of any background check by the department or any other entity, or similar prior approval for participation as a provider in the medical assistance program, in whole or in part, termination from the medical assistance program is mandatory when, in the case of a natural person, the person has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry or, in the case of a corporation or similar entity, 5 percent or more of the corporation or similar entity is owned by a person who has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry.~~

ITEM 4. Amend subrule 79.2(4) as follows:

**79.2(4)** *Imposition and extent of sanction.*

~~a.~~ The department shall consider the totality of the circumstances in determining the sanctions to be imposed. The factors the department may consider include, but are not limited to:

(1) a. Seriousness of the offense.

(2) b. Extent of violations.

(3) c. History of prior violations.

(4) d. Prior imposition of sanctions.

(5) e. Prior provision of provider education (technical assistance).

(6) f. Provider willingness to obey program rules.

(7) g. Whether a lesser sanction will be sufficient to remedy the problem.

(8) h. Actions taken or recommended by peer review groups or licensing boards.

~~b. A ground for sanction may precede enrollment in the medical assistance program, the person's passing of a background check, or similar prior approval for participation as a provider in the medical assistance program. The mere fact of an enrollment, a person's passing of a background check, or another approval is not relevant to the sanction decision.~~

~~c. Upon certification from the U.S. Department of Justice or the Iowa department of justice that a provider has failed to respond to a civil investigative demand in a timely manner as set forth in Iowa Code chapter 685 and the demand itself, the department shall immediately suspend the provider from participation and suspend all payments to the provider. The suspension and payment suspension shall end upon certification that the provider has responded to the demand in full.~~

ITEM 5. Amend paragraph 79.2(7)“a” as follows:

a. Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical

assistance program. Proof of mailing to such address shall be conclusive evidence of proper service of the sanction upon the provider. The department of inspections and appeals is not required to comply with the additional notification provisions of 441—paragraph 7.10(7) “c” for appeals certified for hearing under this chapter.

ITEM 6. Amend subrule 79.2(8) as follows:

**79.2(8)** *Suspension or withholding of payments pending a final determination.* ~~Where the department has notified a provider of any sanction, overpayment, civil monetary penalty, or other adverse action, the~~ The department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question ~~or due to a sanction, incorrect payment, civil monetary penalty, or other adverse action, and may also suspend payment or participation pending a final determination.~~ Where If the department intends to withhold or suspend withholds or suspends payments, it shall notify the provider person in writing within a reasonable time frame.

ITEM 7. Amend subparagraph **79.3(2)“c”(3)** as follows:

(3) Service documentation. The record for each service provided shall include information necessary to substantiate that the service was provided and shall include the following:

1. and 2. No change.

3. The complete time of the service, including the beginning and ending time if the service is billed on a time-related basis. For those non-time-related services billed using Current Procedural Terminology (CPT) codes, the total time of the service shall be recorded, rather than the beginning and ending time.

4. to 9. No change.

ITEM 8. Amend subrule 79.14(3) as follows:

**79.14(3)** Program integrity information requirements.

a. No change.

b. The Iowa Medicaid enterprise may deny enrollment to a provider applicant or disenroll a current provider that has any affiliation as set forth in this rule if the department determines that the affiliation poses a risk of fraud, waste, or abuse. Such denial or disenrollment is appealable under 441—Chapter 7 but, notwithstanding any provision to the contrary in that chapter, the provider shall bear the burden to prove by clear and convincing evidence that the affiliation does not pose any risk of fraud, waste, or abuse. The Iowa Medicaid enterprise shall deny enrollment to or shall immediately disenroll any person that the Iowa Medicaid enterprise, Medicare, or any other state Medicaid program has ever terminated under 441—79.2(249A) or a similar provision and shall deny enrollment to any person presently suspended from participation, or who would be subject to a suspension, under paragraph 79.2(3) “c.” Further, a person sanctioned under 441—79.2(249A) or a similar provision may not manage consumer choices option (CCO) funds for a member.

c. For purposes of this rule, the term “direct or indirect affiliation” includes but is not limited to relationships between individuals, business entities, or a combination of the two. The term includes but is not limited to direct or indirect business relationships that involve:

- (1) A compensation arrangement;
- (2) An ownership arrangement;
- (3) Managerial authority over any member of the affiliation;
- (4) The ability of one member of the affiliation to control or influence any other; or
- (5) The ability of a third party to control or influence any member of the affiliation.

d. Notwithstanding any previous successful enrollment in the medical assistance program, the passing of any background check by the department or any other entity, or similar prior approval for participation as a provider in the medical assistance program, in whole or in part, disenrollment from the medical assistance program is mandatory when, in the case of a corporation or similar entity, 5 percent or more of the corporation or similar entity is owned, controlled, or directed by a person who (1) has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry; (2) has pled guilty or nolo contendere to, or was convicted of, any crime punishable by a term of imprisonment greater than five years; (3) has, within the last five years, pled guilty or nolo

contendere to, or was convicted of, any controlled substance offense; (4) has, within the last ten years, pled guilty or nolo contendere to, or was convicted of, any crime involving an allegation of dishonesty punishable by a term of imprisonment greater than one year but not more than five years; or (5) within the last ten years, has on more than one occasion pled guilty or nolo contendere to, or was convicted of, any crime involving an allegation of dishonesty.